

Emperor Vs. Pascal Shimau

Emperor Vs. Pascal Shimau

SooperKanoon Citation : sooperkanoon.com/335062

Court : Mumbai

Decided On : Apr-19-1907

Reported in : (1907)9BOMLR703

Judge : Chandavarkar and ;Heaton, JJ.

Appeal No. : Criminal Application for Revision No. 72 of 1907

Appellant : Emperor

Respondent : Pascal Shimau

Judgement :

Chandavarkar, J.

1. The petitioner has been convicted by the Cantonment Magistrate of Ahmednagar under Section 13 of the Cantonments Act 13 of 1889, of the offence of supplying liquor to a European soldier. The facts found are that the petitioner, being a servant of the soldier, bought liquor from a shop in obedience to the soldier's directions and gave it to him. The liquor was purchased with the soldier's money. The Magistrate has held that the act of the petitioner in purchasing the liquor and giving it to the soldier amounts to 'supplying ' it to him within the meaning of the term as used in Section 13. The word ' supply' may mean 'to give' or 'to bring' but having regard to the collocation of the words in Section 13 we do not think that it is used in that wide sense, The material words are : If 'any

person....knowingly barter, sells or supplies.' It is important to bear in mind that so far the section begins with the word 'barter, ' a word of an inferior degree or limited meaning and ends with the word 'supply ' with a more extensive signification. To such a case the rule applies that 'where a particular class (of persons or things) is spoken of and general words follow, the class first mentioned is to be taken as the most comprehensive and the general words treated as referring to matters ejusdem generis with such class:' per Pollock C.B. in Lyndon v. Standbridge (1857) 2 H, & N. 51. The word 'barter ' means interchange, the exchange of one commodity for another and the idea underlying it is that it is in the nature of a transaction between two persons dealing in respect of it with each other at arm's length. 'Sale ' carries with it the same idea except that in it money is paid for the commodities transferred. And when the word 'supply'comes immediately after those two words, it must be understood as having the same idea underlying it in common with them. It also must relate to a transaction between two persons dealing at arm's length and therefore independent of each other for its purposes. A person is said to supply one thing to another when that thing belongs to him or rather when the thing does not belong to the latter. That cannot be said when a servant gives to his master what belongs to the master himself. If the master orders his servant to buy liquor from a shop and bring it to him the moment the liquor is bought it becomes the master's property. The possession of the servant is in law the possession of the master and the former is identified for the purposes of the transaction with the latter. In such a case the servant cannot be said to supply his master with the liquor. Suppose a master having liquor belonging to him in his own house or room orders his servant to bring it for him to drink and the servant obeys the order, it can hardly be said in such a case that the servant has supplied liquor to his master. What difference can it make if the liquor is bought by the servant with his master's money from a liquor seller in obedience to his order and given to him The only difference is of place but in other respects the two cases are exactly alike. That the Legislature did not intend this to be the meaning of the word 'supply' is clear from the fact that it occurs after two words of a more limited meaning. That word, therefore, must have a restricted meaning put upon it in Section 13 and is inapplicable in the case of a servant giving his master liquor belonging to the master himself. This view of the section is confirmed by Section

14 which provides for the case of the wife or servant of a soldier apparently as being a special case on account of the relation in which they stand to the soldier and the indispensable character of their services. They are allowed to have in their possession a certain prescribed quantity of liquor. On these grounds we must reverse the conviction and sentence and acquit the petitioner.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com